In the High Court of Uttaranchal, at Nainital.

Special Appeal No. 03/2006

Director, Uttaranchal Krishi Utpadan Mandi
Parishad, Rudrapur …. Appellant.

Versus

1- Lekh Raj Singh S/o Pyare Singh

2- Vimal Singh Chauhan S/o Lekh Raj Singh
R/o Mohalla Julahan Combined Hospital
Road Jaspur,
District Udham Singh Nagar.

3- State of Uttaranchal,
through Principal Secretary,
Agriculture ……..Respondents.

Sri J.C. Belwal, Advocate for the appellant.
Sri Dharam Veer Sharma, Senior Advocate,
Learned Counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 3-5-2006

This Special Appeal has been preferred against the judgment and order dated 17-12-2005, passed by the learned Single Judge of this Court, in W.P. No. 579(S/S/)/2004, Lekhraj Singh and another versus State of Uttaranchal and another.

2- Brief facts giving rise to this appeal are that the respondent Nos. 1 and 2 Lekhraj Singh and Vimal Singh preferred the writ petition for a direction to the appellant to provide job to them in Krishi Utpadan Mandi Samiti on the ground that one Smt. Premwati W/o Pyare Lal was the Bhumidhar with transferable rights of the land, Khasra No. 60-A measuring area 1.87 acre and Khasra No. 60-B measuring area 0.14 acre total area 2.01 acre at village Amritpur, Tehsil Kashipur (now Tehsil Jaspur). After the death of Smt. Premwati, the land was recorded in the names of her five sons, namely, Balbir Singh, Mahavir Singh, Mahipal Singh, Lekhraj Singh and Yashpal Singh. The Govt. acquired land of respondent No. 1 and his brothers vide order dated 28th January 1986 to construct a new Sub-market Yard, Jaspur Krishi Utpadan

Mandi Samiti. The respondent no.1 had also received compensation of his share of the acquired land. At the time of acquisition of the land, the appellant assured the respondents that a member of the deprived family will be given job in Mandi Parishad for which the land is being acquired. The respondent No.2 Vimal Singh, who is the son of respondent No.1 Lekhraj Singh, is a graduate and he submitted his application to the appellant on 19-03-2003 for providing job to him in pursuance of various Govt. Orders issued to the effect that jobs should be provided to one member of the family whose land has been acquired. However, the appellant did not pay any heed to the request of respondent no.2, thus the respondents were compelled to file the writ petition.

3- The counter affidavit was filed by the appellant before the learned Single Judge and it was stated in paragraph-5 of the counter affidavit that at the time of acquisition of land name of Smt. Premwati was entered as Bhumidhar in the Khautani.

4- The learned Single Judge finally disposed the writ petition with the direction that the respondent No.2 Vimal Singh be considered for his appointment in Mandi Samiti/ Mandi Parishad and in case if the post is not vacant, his case may be considered, whenever post is made available.

5- Feeling aggrieved by the aforesaid impugned judgment and order this appeal has been preferred.

6- We have heard the learned counsel for the parties and perused the record.

7- Learned counsel for the appellant has argued that at the time of acquisition of the land in the year 1986, the land was jointly recorded in the name of respondent no.1 and his brothers and admittedly appointment on compassionate ground has been given to one of the son of these brothers whose land was acquired. It has also been argued by the appellant that the respondent No.1 does not come within the definition of displaced person as his total land was not acquired and he has still 0.579 hectares of land.

8- It is clear from the counter affidavit filed by the appellant before the learned Single Judge that at the time of acquisition of that land the name of Smt. Premwati was entered as Bhumidhar and there is no evidence that there had been partition between Lekhraj Singh and his brothers. The counter affidavit further reveals that one member of displaced family Neeraj Kumar has already been given employment. It was also pleaded that Government Order nowhere provides that a member of the displaced family shall be given employment, on the contrary the Order only provides that a member of the displaced family shall be given preference at the time of selection on the basis of equal opportunity, if he is at par with other candidates.

9- The Hon'ble Apex Court in the case of **Satluj Jal Vidyut Nigam Ltd. and another vs. Dila Ram and others** reported in **(2005) 2 Supreme Court Cases 122** has observed as under:-

> *"12. In our view, the High Court erred in accepting the contention of the respondents that since Durga Singh was residing separately for the last 11 years, he could not be treated as a part of the family and his holding had to be reckoned as if it was a holding of a separate family. The High Court relied on some judgments referred with reference to the concept of family under Section 4 of the Partition Act, 1893. In our view, it was wholly unnecessary to refer to the statutory definition of "family given under the Partition Act. As far as the benefit under the Scheme is concerned, the only question which the High Court had to determine was whether the respondents were eligible to any benefits in terms of the Scheme. The Scheme is made applicable to "each family which is rendered landless". The revenue records indicate that the land was held jointly by Sunder Singh, Dila Ram and other members of the family. Whether Durga Singh was residing separately or not is wholly irrelevant and besides the issue. The test to be adopted under the Scheme was whether there was joint holding and relationship as a family. The High Court seems*

to have understood that the Scheme was intended to give benefits to each member of the landless family. If this interpretation were to be accepted, then the Corporation would have to provide more land for distribution to each member of the landless family than, perhaps, even the total land acquired. In the instant case, the Corporation would have to provide 35 bighas of land, 7 houses and employment to 7 members of the family, for acquiring only 28 bighas of land and one house. The High Court seems to have fallen into an error in adopting the meaning of "family" from judgments, which were rendered in relation to Section 4 of the Partition Act and under the Rent Control Acts.

13. The Scheme emphasized joint holding and family relationship. As long as these existed, the fact that any particular person was residing separately, is of no consequence. Adjudged by this test, Durga Singh was a part of the landless family whose land has been acquired. Consequently, he having been first to apply, was given the benefit under the Resettlement and Rehabilitation Scheme. There was no further obligation on the part of the Corporation to provide any more benefits thereunder.

14. The learned counsel for the respondents contended that, Durga Singh being a stepbrother, he had taken all the benefits under the Resettlement and Rehabilitation Scheme and deprived the other members of the family. There is a matter of dispute inter se within the family with which the appellant Corporation is not concerned in any way nor could the High Court grant any relief based thereupon. It is open to the other members of the family to take appropriate legal action as they may be advised to seek a share in the benefits of the Resettlement and Rehabilitation Scheme with were made available by the appellant to Durga Singh."

10- In view of the aforesaid decision of the Hon'ble Supreme Court, we come to the conclusion that his appeal is liable to be

allowed. It is open for the other members of the family to take appropriate legal action as they may be advised to seek share in the benefits of Resettlement and Rehabilitation Scheme, which were made available by the department to Neeraj Kumar.

11- The appeal is accordingly allowed. The impugned judgment and order dated 17-12-2005 passed by the learned Single Judge is set aside. Consequently the writ petition filed by the respondent Nos. 1 and 2 is dismissed. There shall be no order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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